TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1925

No. [redacted] 104

IRENE HAND CORRIGAN AND HELEN CURTIS, OTHERWISE KNOWN AS MRS. A. L. CURTIS, APPELLANTS,

vs.

JOHN J. BUCKLEY

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

FILED JUNE 21, 1924

(30,424)

(30,484)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 469

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APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 30, 1924

[fol. 1] **COURT OF APPEALS OF THE DISTRICT OF COLUMBIA**

[Caption omitted]

SUPREME COURT OF THE DISTRICT OF COLUMBIA

Equity. No. 40702

JOHN J. BUCKLEY, Plaintiff,

vs.

IRENE HAND CORRIGAN and HELEN CURTIS, Otherwise Known as Mrs. A. L. Curtis, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Coluumbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to-wit:

ORIGINAL BILL OF COMPLAINT—Filed November 16, 1922

[Title omitted]

The bill of complaint of the above named plaintiff respectfully shows to the Court as follows:

1. The plaintiff John J. Buckley is a citizen of the United States of lawful age and a resident of the District of Columbia, and brings [fol 2] this suit in his own right, and also on behalf of such other persons similarly situated as may subsequently, with leave of this Court, intervene herein and become parties hereto.

2. Plaintiff is informed and believes and therefore avers that the defendants Irene Hand Corrigan and Helen Curtis are, respectively, citizens of the United States of lawful age and residents of the District of Columbia; and the said defendants Corrigan and Curtis are sued, respectively, in their own right.

3. That the plaintiff now is and for some time last past continuously has been the owner of an undivided interest in that certain piece or parcel of land lying and being in the City of Washington, District of Columbia, known and described as Lot 74, Square 152, as recorded in the Surveyor's office of said District and improved by dwelling house and premises known as 1719 S Street, Northwest, Washington, District of Columbia; that is to say, the plaintiff and his sister, May V. Buckley, are the owners in equal shares of the said

land described in this paragraph subject to a life estate in the same of Margaret E. Buckley, mother of plaintiff and said May V. Buckley.

4. That the defendant Irene Hand Corrigan now is, and for some time last past continuously has been, the owner of that certain piece and parcel of land lying and being in the City of Washington, District of Columbia, known and described as Lot 20, Square 152, as recorded in the Surveyor's office of said District and improved by dwelling house and premises known as 1727 S Street, Northwest, in said City and District.

5. That on, to-wit, the 1st day of June, A. D., 1921, the plaintiff, as one of the owners of the land and premises hereinbefore described in paragraph 3 hereof, and the defendant Corrigan as the owner of the land and premises hereinbefore described in paragraph 4 hereof, together with the said May V. Buckley and Margaret E. Buckley, mentioned in paragraph 3 hereof and a large number, to-wit, twenty-eight, other persons, all of whom, at said last mentioned date, severally owned certain other, to-wit, twenty-three other parcels of lands and premises improved by dwelling houses adjacent and contiguous to and in the same immediate neighborhood of the said land and premises hereinbefore described in paragraphs 3 and 4 of this bill, all improved by dwelling houses and all lying and being in the City of Washington, District of Columbia, more particularly in Squares numbered 152 and 153, respectively, as recorded in the Surveyor's Office of said District and severally situated on both the north and south sides of "S" Street, between New Hampshire Avenue and 18th Street, Northwest, in said City and District, made and entered into an Indenture or Covenant and duly executed, acknowledged and mutually delivered the same as provided by law and caused the same to be deposited for record in the office of the Recorder of Deeds for the District of Columbia on the 20th day of August, A. D., 1921, where the same was duly recorded on said 20th day of August, A. D., 1921, in Liber No. 4,532, at Folio 277, et seq., of the land records of the said District. All the persons who executed said Indenture or Covenant as aforesaid are white persons, a large number of whom [fol. 3] occupied, resided in and made their homes, and continued to occupy, reside and make their homes in said premises, respectively.

6. After reciting in said Indenture or Covenant that they were the several owners of the lands and premises described therein, and mentioned and described in paragraphs 3, 4, and 5 of this bill, and that they desired, for their mutual benefit, as well as for the best interests of the community and neighborhood comprising said lands, dwelling houses and premises, to improve and in any legitimate way to further the interests of the same, the said plaintiff and the said defendant Corrigan and the said other parties to said Indenture or Covenant did therein and thereby, in consideration of the premises and the sum of Five Dollars ($5.00) each to the other in hand paid, mutually covenant, promise and agree, each with the other and for their respective heirs and assigns, that no part of the land then severally owned by the parties to said Indenture or Covenant and de-

scribed therein, including the respective lands and premises of the plaintiff and defendant Corrigan as hereinabove in paragraphs 3 and 4, respectively, described, shall ever be used or occupied by, or sold, conveyed, leased or rented to negroes or any person or persons of the negro race or blood, and that the said Indenture or Covenant shall run with the land and bind the respective heirs and assigns of the parties thereto, including the plaintiff and the defendant Corrigan as aforesaid, for a period of twenty-one years from and after the date thereof. Plaintiff attaches hereo marked Exhibit No. 1 a true copy of said Indenture or Covenant, and prays that the same be read as a part of this bill as fully as if set out herein.

7. That on or about the 26th day of September, 1922, the defendant Corrigan being the owner of lands and premises hereinabove in paragraph 4 described; which said lands and premises are restricted as to ownership, use or occupancy by the said Indenture or Covenant as aforesaid, executed and entered into a so-called Sales Contract with the defendant Curtis, by the terms of which the defendant Curtis, under the name Mrs. A. L. Curtis, did therein and thereby agree to purchase from the defendant Corrigan and the defendant Corrigan did therein and thereby agree to sell to the defendant Curtis the said lands and premises mentioned and described in paragraph 4, hereof, under the terms and provisions as in said Sales Contract set forth. Thereafter, on or about the 10th day of October, 1922, the defendant Curtis delivered for record the said Sales Contract at the office of the Recorder of Deeds of the District of Columbia, there appearing on the back of the paper writing containing said sales contract a purported acknowledgment and certificate by a notary public. Plaintiff attaches hereto marked Exhibit No. 2 a true copy of said Sales Contract and purported acknowledgment and certificate, and prays that the same be read as a part of this bill as fully as if set out herein.

8. That the defendant Curtis with whom the defendant Corrigan entered into the contract of sale mentioned and described in paragraph 7 hereof, is a negress and a person of the negro race and blood [fol. 4] and is the wife of one Arthur L. Curtis who is also a person of the negro race and blood, and at and before the making of said contract of sale had knowledge of the existence, contents and terms of said Indenture or Covenant mentioned and described in paragraph 6 hereof; and that in executing and entering into said contract of sale the defendant Corrigan promised and agreed to do and perform certain acts and things in violation of the terms and conditions of the Indenture or Covenant hereinabove in paragraph 6 described, to-wit, the said defendant Corrigan promised and agreed in said contract to sell and convey the said land and premises mentioned and described in paragraph 4 hereof to a negress and a person of negro race and blood, in violation of said Indenture or Covenant.

9. Plaintiff is informed and believes and upon such information and belief avers, that upon being advised and informed that de-

fendant Corrigan had executed and entered into the aforesaid contract of sale a number of the persons who are parties to the aforesaid Indenture or Covenant both verbally and in writing objected and protested to the defendant Corrigan against the execution or carrying out by her of the terms and provisions of said contract of sale, and that in response to said objections and protests and in justification of her attempted breach and violation of said Indenture or Covenant as aforesaid, the said defendant Corrigan stated both verbally and in writing to several of said parties that she was tricked and defrauded into signing the aforesaid contract of sale by reason of misstatements and misrepresentations made to her by the real estate broker negotiating the said contract and by the defendant Curtis to the effect that said defendant Curtis was not a negress or a person of negro race or blood, but on the contrary was a white person; and plaintiff is informed and believes and therefore avers that the defendant Corrigan, through her attorney, thereupon communicated with the defendant Curtis demanding a cancellation of the said contract of sale on the ground of fraud and misrepresentation aforesaid used and resorted to in procuring the defendant Corrigan to enter into the said sales contract.

10. The plaintiff is credibly informed and believes and therefore avers that subsequently the defendant Curtis tendered to the defendant Corrigan the money and notes representing the purchase price provided in the said contract of sale for the land and premises involved as aforesaid, and demanded a conveyance of the same and that defendant Corrigan thereupon, on the ground of said misrepresentations, did decline and refuse to accept the said money or notes or to sign or deliver a deed to defendant Curtis to said land and premises or in any manner to execute or carry out the terms and provisions of the aforesaid contract of sale.

11. That plaintiff is credibly informed and believes and therefore avers that subsequently, on, to-wit, October 21, 1922, the defendant Corrigan reversed her position as aforesaid in respect to the said contract of sale, and in a letter to her attorney, bearing the date last aforesaid, stated, among other things, in effect that her personal interests made it imperative that she dispose of said land and premises at once, that she had hoped that the defendant Curtis would [fol. 5] consent to cancel the said contract of sale, but that she believed at the time of writing said letter, to-wit, October 21, 1922, that said hope was unfounded, that defendant Curtis intended to attempt to enforce the said contract, and that she, defendant Corrigan, was unwilling to suffer the expense, embarrassment and loss of income in preventing its enforcement.

12. Plaintiff is credibly informed and believes and therefore avers that subsequently on, to-wit, November 8, 1922, the defendant Corrigan definitely stated in a letter bearing the date last aforesaid that she would not "fight" the said contract of sale, that is to say, would not refuse to execute and carry out the terms and conditions thereof, nor would she refuse to sell and convey to defendant Curtis the land

and premises involved as aforesaid, nor would she refuse to make, sign, seal and deliver a deed to the same to said defendant last named, but on the contrary in the letter last mentioned proposed that the persons who are parties to the aforesaid Indenture or Covenant, or some of them, purchase and take over her said land and premises on the same terms as provided in the said contract of sale and oppose the defendant Curtis in the courts and otherwise in obtaining and maintaining possession of the same against the defendant Curtis, and also guarantee and indemnify the defendant Corrigan from and against any and all loss or damage by reason of a breach of the said contract of sale, that is to say, by reason of the refusal of said defendant Corrigan to carry out the terms thereof.

13. That such proposal last named has not been and will not be accepted by plaintiff nor, so far as plaintiff is aware and believes, by any of the other parties to said Indenture or Covenant, and plaintiff is credibly informed and believes and therefore avers that the defendant Corrigan, for several days last past has been, and now is, threatening to execute and carry out and is about to execute and carry out the terms and provisions of the aforesaid contract of sale and in pursuance thereof to sell and convey to defendant Curtis the land and premises involved as aforesaid and to make, sign, seal and deliver a deed to the same to said defendant Curtis.

14. That if the threats aforesaid are fulfilled and carried out and the defendant sells and conveys to defendant Curtis the said land and premises and makes, signs, seals and delivers a deed to the same to said defendant Curtis, irreparable injury will be done to the plaintiff and to the other persons who are parties to the aforesaid Indenture or Covenant and that plaintiff has no plain, adequate and complete remedy at law; and plaintiff further avers that he is entitled to specific performance on the part of the defendant Corrigan of her said agreements and covenants as set out in the said Indenture or Covenant mentioned and described in paragraph 6 of this bill and to have the terms and provisions of said Indenture or Covenant specifically enforced in equity by means of an injunction preventing both the said defendants Corrigan and Curtis from carrying into effect the said contract of sale mentioned and described in paragraph 7 of this bill.

Wherefore the premises considered the plaintiff prays:

1. That process may issue against the defendants named herein [fol. 6] commanding them and each of them to appear herein on a day certain to answer the exigencies of this bill of complaint as fully as if specially interrogated thereto.

2. That defendant Irene Hand Corrigan be permanently enjoined during the period of twenty-one years from the date of said Indenture or Covenant, to-wit, the 1st day of June, A. D., 1921, from complying with or carrying out in any manner whatsoever all or any of the terms and provisions of the contract of sale hereinabove men-

tioned, and from directly or indirectly selling and conveying, or causing to be sold and conveyed, to the defendant Helen Curtis, otherwise known as Mrs. A. L. Curtis, the said land and premises mentioned and described in paragraph 4 of this bill, and from making, signing, sealing and delivering to the said defendant Curtis a deed or any other form of conveyance of said land and premises.

3. That the said defendant Helen Curtis, otherwise known as Mrs. A. L. Curtis, and her heirs and assigns, be permanently enjoined, during the period of twenty-one years from the date of said Indenture or Covenant, to-wit, the first day of June, A. D., 1921, from taking title, directly or indirectly, to said land and premises mentioned and described in paragraph 4 of this bill, and from using or occupying the same and from selling, conveying, leasing, renting or giving the same to or permitting the same to be used or occupied by any negro or negroes or person or persons of negro race or blood.

4. For such other and further relief as to the Court may seem just and proper.

John J. Buckley. James S. Easby-Smith, Leslie C. Garnett, David A. Pine, Attorneys for Plaintiff.

DISTRICT OF COLUMBIA, ss:

John J. Buckley, being first duly sworn, deposes and says that he has read the foregoing bill of complaint by him subscribed and knows the contents thereof, and that he verily believes the facts stated therein to be true.

John J. Buckley.

Subscribed and sworn to before me this 16th day of November, 1922. F. Morgan Cook, Notary Public, D. C. (Seal.)

[fol. 7] [Title omitted]

EXHIBIT NO. 1 TO BILL OF COMPLAINT

This indenture made this first day of June A. D. 1921, by and between the undersigned, all being residents of the City of Washington, District of Columbia, and owners of real estate situate therein, witnesseth that:

Whereas the said parties hereto are all owners of real estate situate in the District of Columbia, and located on S Street, between New Hampshire Avenue and 18th Street, Northwest, both on the north side and south side of said street, said property being parts of Squares 152 and 153 as recorded in the Surveyor's Office of the District of Columbia, and

Whereas the said parties hereto desire, for their mutual benefit, as well as for the best interests of the said community and neighbor-

hood, to improve — in any legitimate way further the interests of said community,

Now therefore, in consideration of the premises and the sum of Five Dollars ($5.00) each to the other in hand paid, the parties hereto do hereby mutually covenant, promise and agree each with the other and for their respective heirs and assigns, that no part of the land now owned by the parties hereto, a more detailed description of said property being given after the respective signatures hereto, shall ever be used or occupied by, or sold, conveyed, leased, rented, or given, to Negroes or any person or persons of the Negro race or blood. This covenant shall run with the land and bind the respective heirs and assigns of the parties hereto for the period of twenty-one (21) years from and after the date of these presents.

Name		Description of land
Jno. Lewis Smith.	(Seal.)	1730 S St. Lot 57 Square 153, and lot 56 in Square 153, & Square 153.
Claribel C. Smith.	(Seal.)	1730 S St. Lot 57 Square 153.
James B. Archer.	(Seal.)	Lot 56 Square 153.
Irene Hand Corrigan.	(Seal.)	1727 S Lot 70 Square 152.
W. M. Wallace.	(Seal.)	1728 S St. Lot 58 Sq. 153.
[fol. 8]		
James S. Easby-Smith.	(Seal.)	1721 S St. N. W. Lot 73 Sq. 152.
Julia C. Douglas.	(Seal.)	1723 S St. N. W. Lot 72 Sq. 152.
Allan E. Walker.	(Seal.)	1725 S Street N. W. Lot 71 Square 152.
Maude K. Walker.	(Seal.)	Lot 71 Square 152.
Douglass E. Bullock.	(Seal.)	Lot 114 Square 153 1746 S Street, N. W.
Mary T. Thornton.	(Seal.)	1748 S, Square 153 Lot 113.
Mrs. A. K. Gibson.	(Seal.)	Lot 59 Square 153 1726 S St.
M. D. Moore.	(Seal.)	1722 S Street N. W. Lot 807 Sq. 153.
Mrs. E. Bool.	(Seal.)	Lot 800 Squar- 152 1707 S St. N. W.
Florence Gibbs Johnson.	(Seal.)	Lot 800 Square 152 1707 "S" Street, N. W.
Ida B. Higley.	(Seal.)	1742 S Street N. W. Lot 116 Square 152.
Henry P. West.	(Seal.)	1744 S St. Lot #115 Sq. 153.
Sue Eaton West.	(Seal.)	1744 S St. Lot #115 Sq. 153.

Name		Description of land
Stephen E. Cochran.	(Seal.)	Lot 77 Square 152 1711 S St. N. W.
Katie F. Lannen.	(Seal.)	Lot 117 Square 153 1740 S St. N. W.
Louis J. Fosse.	(Seal.)	Lot 76 Square 152 1713 S St. N. W.
Michael M. Lyons.	(Seal.)	Lot 75 Square 152 1717 S St. N. W.
John J. Buckley.	(Seal.)	Lot 74 Square 152 1719 S St. N. W.
(Mrs.) Margaret E. Buckley.	(Seal.)	Lot 74 Square 152.
Mary J. Wallis.	(Seal.)	Lot 111, Square 153 1752 S St.
James A. Tumelty.	(Seal.)	Lot 27 Square 152 1729 S N. W.
May V. Buckley.	(Seal.)	Lot 74 Square 152 1719 S N. W.
J. Maury Dove.	(Seal.)	Lot 808 Square 153.
Mrs. Mary M. Dunbar	(Seal.)	1737 S St. N. W. Lot 26 Square 152.
C. N. Allison.	(Seal.)	1731 S St. N. W. Lot 178 Square 152.
[fol. 9]		
Frederick D. Owen.	(Seal.)	1750 S St. N. W. Lot 112, Sq. 153.
Mary V. Merrick.	(Seal.)	1754 S St. E. 18 ft. of Lot 48 and 22.50 ft. of Lot 49 on S Street.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, W. Edgar Leedy, a Notary Public in and for the District of Columbia, do hereby certify that John Lewis Smith, Claribel C. Smith, James B. Archer, Irene Hand Corrigan, W. M. Wallace, James S. Easby-Smith, Julia C. Douglas, Allan E. Walker, Maud K. Walker, Douglas E. Bullock, Mary T. Thornton, Mrs. A. K. Gibson, M. D. Moore, Mrs. E. Bool, Florence Gibbs Johnson, Ida B. Higley, Henry P. West, Sue Eaton West, Stephen E. Cochran, Katie F. Lannen, Louis J. Fosse, Michael W. Lyons, John J. Buckley, Margaret E. Buckley, Mary J. Wallis, James A. Tumulty, May V. Buckley, J. Maury Dove, Mrs. May M. Dunbar, C. N. Allison, and Frederick D. Owen, parties to a certain indenture bearing date on the first day of June, 1921, and hereto annexed, personally appeared before me in said District the said John Lewis Smith, Claribel C. Smith, James B. Archer, Irene Hand Corrigan, W. M. Wallace, James S. Easby-Smith, Julia C. Douglas, Allan E. Walker, Maud K. Walker, Douglas E. Bullock, Mary T. Thornton, Mrs. A. K. Gibson, M. D. Moore, Mrs. E. Bool, Florence Gibbs Johnson,

Ida B. Higley, Henry P. West, Sue Eaton West, Stephen E. Cochran, Katie F. Lannen, Louis J. Fosse, Michael W. Lyons, John J. Buckley, Margaret E. Buckley, Mary J. Wallis, James A. Tumulty, May V. Buckley, J. Maury Dove, Mrs. May M. Dunbar, C. N. Allison, and Frederick D. Owen, being personally well known to me as the persons who executed the said Indenture, and acknowledged the same to be their act and deed.

Given under my hand and seal this 21st day of June, 1921.
W. Edgar Leedy, Notary Public, D. C. (Notarial Seal.)

UNITED STATES OF AMERICA,
State of Maryland,
County of Howard, set:

I, Mary E. T. Sanner, a Notary Public, in and for the State of Maryland, County of Howard, do hereby certify that Mary V. Merrick, a party to a certain indenture bearing date on the first day of June, 1921, and hereto annexed, personally appeared before me in said County, the said Mary V. Merrick being personally well known to me as the person who executed the said indenture, and acknowledged the same to be her act and deed.

Given under my hand and seal this 28th day of July, 1921.
Mary E. T. Sanner, Notary Public. (Notarial Seal.)

[fol. 10] [Title omitted]

EXHIBIT NO. 2 TO BILL OF COMPLAINT

Washington, D. C., September 25, 1922.

Received from Mrs. A. L. Curtis a deposit of the sum of five hundred Dollars to be applied as part payment of purchase price of lot — in square —, with improvements thereon known as 1727 S St. N. W., in the District of Columbia, as follows:

Price of property sixteen thousand five hundred dollars.

Terms of sale five thousand dollars in cash, balance payable in annual installments of $1,000 with privilege of paying additional installments in amounts of $1,000 or multiple thereof at any interest period with interest on said balance at seven per cent payable semi-annual-.

Secured by deed of trust constituting a first lien on the property hereby sold, in form customarily used in the District of Columbia.

Where trustees are to be named in a deed of trust or trusts, the said trustees are to be named by the party respectively secured thereby.

The title is to be good of record except as to covenants of record, if any, or deposit is to be returned and sale declared off at option of the

purchaser; but the seller and agent are hereby expressly released from all liability for damages by reason of any defect in title. In case legal steps are necessary to prove title such action must be taken by the seller promptly at his own expense, whereupon the time herein specified for full settlement by purchaser will thereby be extended the period necessary for such prompt action.

Rents, taxes, water rent, insurance and interest on existing incumbrances, if any, are to be adjusted to date of transfer. Taxes are to be adjusted according to certificate of taxes as issued by the Collector of Taxes of the District of Columbia; except that special improvements completed prior to date hereof, whether assessment therefor has been levied or not, shall be paid or proper allowance made therefor by the vendor at the time of the transfer.

Examination of title, conveyancing, notary fees, and all recording charges including those for purchase money trust, if any, are to be at the cost of the purchaser. Revenue stamps on deed to be paid by vendor, who shall execute to the purchaser the usual special warranty deed.

[fol. 11] The purchaser agrees to comply with the terms herein of sale within 30 days from the date of acceptance by owner or the deposit will be forfeited, in which event one-half of said deposit shall be paid to E. E. Geiger, but the forfeiture of deposit shall not relieve the purchaser from responsibility of complying with terms of sale.

This contract is made in Triplicate subject to the approval of owner and contains the entire agreement between the parties thereto.

Vendor agrees to repair and paper ceiling in dining room.

E. E. Geiger, Agent.

We, the undersigned, hereby ratify, accept and agree to the above memorandum of sale, and acknowledge it to be our contract.

Mrs. A. L. Curtis, Purchaser. Irene Hand Corrigan, Owner.

Date, September 26th, 1922.

NOTE.—Following on back of contract:

DISTRICT OF COLUMBIA, ss:

I, Theodore L. Baker, a notary public in and for the District of Columbia, certify that before me personally appeared one Mrs. A. L. Curtis, the said Mrs. A. L. Curtis being personally well known to me and made oath in due form of law that the contract of sale hereto attached is her own act and deed.

Mrs. A. L. Curtis, Affiant.

Subscribed and sworn to before me this 10th day of October, 1922. Theodore L. Baker, Notary Public.

Received for record on the 10th day of October, A. D. 1922, at 2-16 P. M. and recorded in Liber No. — et seq. of the land records of the D. C.

—— ——, Recorder.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

MOTION OF DEFENDANT NO. 2 TO DISMISS BILL—Filed December 7, 1922

* * * * * * *

Comes now the defendant, Helen Curtis, in the above entitled cause, by her attorneys, and moves the Court to dismiss the Bill of Complaint therein, upon the following grounds:

As in and by the said Bill, as it sets forth and appears, the alleged Indenture or Covenent is void, in that, it attempts to deprive the de- [fol. 12] fendant, the said Helen Curtis, and others of property, without due process of law; abridges the privileges and immunities of citizens of the United States, including the defendant, Helen Curtis, and other persons within this jurisdiction the equal protection of the law, and therefore, is forbidden by the Constitution of the United States, and especially by the Fifth, Thirteenth, and Fourteenth Amendments thereof, and the Laws enacted in aid and under the sanction of the said Thirteenth and Fourteenth Amendments.

Emory B. Smith, James A. Cobb, Attorneys for Defendant Helen Curtis.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

OPINION—Filed April 12, 1923

* * * * * * *

This is a motion by the defendant Helen Curtis to dismiss as not stating a cause of action for an injunction a bill which makes the following case.

The plaintiff and other owners of real property in a certain block in the District of Columbia one of whom was the defendant Irene H. Corrigan owning separately twenty-four parcels of real estate in that block improved by dwelling houses made an agreement on June 1, 1921, which was recorded in the office of the Recorder of Deeds for the District. All the parties to the agreement were white persons a large number of whom resided and continue to reside on the premises respectively. The agreement recites that the parties for the mutual benefit of the community and neighborhood comprising the said property desired to improve and in any legal way further the interest of the same and provides that in consideration of the premises and of the sum of five dollars each to the other paid the parties thereto "mutually covenant, promise and agree each with the other and for their respective heirs and assigns, that no part of the land now owned by the parties hereto, a more detailed description of said property being given after the respective signatures hereto, shall ever be used or occupied by, or sold, conveyed, leased, rented, or given, to

Negroes or any person or persons of the Negro race or blood. This covenant shall run with the land and bind the respective heirs and assigns of the parties hereto for the period of twenty-one (21) years from and after the date of these presents."

On September 26, 1922, the defendant Corrigan entered into a contract with the defendant Curtis by which the latter agreed to purchase and the former agreed to sell her parcel of land included in the restrictive agreement which contract of sale was recorded on October 10, 1922, in the office of the Recorder of Deeds for the District. The contract of sale provided that the title to the property was to be good of record "except as to the covenants of record if any." [fol. 13] The defendant Curtis is a negress and a person of the negro race and blood and is the wife of one who is a person of the negro race and blood and at and before the time of said contract of sale had knowledge of the existence and terms of the agreement between the plaintiff and the other property owners.

The bill was filed November 16, 1922.

The grounds as set forth by Mrs. Curtis on which she moves to dismiss the bill are stated in the motion as follows:

"As in and by the said Bill, as it sets forth and appears, the alleged Indenture or Covenant is void, in that, it attempts to deprive the defendant, the said Helen Curtis, and others of property, without due process of law; abridges the privileges and immunities *or* citizens of the United States, including the defendant, Helen Curtis, and other persons within this jurisdiction the equal protection of the law, and therefore, is forbidden by the Constitution of the United States, and especially by the Fifth, Thirteenth and Fourteenth Amendments thereof, and the Laws enacted in aid and under the sanction of the said Thirteenth and Fourteenth Amendments."

The Court of Appeals has held that the Fourteenth Amendment is not in force in the District of Columbia, Siddons vs. Edmonston, 42 App. D. C. 459, and see District of Columbia vs. Brooke, 214 U. S. 138. However the provisions of that Amendment are so far as concerns the question here involved as broad at least as those of the Fifth and Thirteenth Amendments and if the provisions of the Fourteenth Amendment would not if applicable sustain the defendant's contention the other two Amendments need not be considered. See District of Columbia vs. Brooke, supra, at page 149.

The question here involved has never been directly decided by the Supreme Court of the United States although it has been involved and passed upon by several of the State courts and there ruled adversely to the defendant's contention. It was held in Plessy vs. Ferguson, 163 U. S. 537, that mere discrimination between races is not sufficient to invalidate a State statute. That case will be referred to later and more at length. In Title Guarantee and Trust Company vs. Garrott, 42 Calif. App. 152, the Court refused to enforce a condition in a deed providing for forfeiture in case of a sale of the property to any person of African, Chinese or Japanese descent

but stated that it did not place its decision on any supposed constitutional right. The argument that to enforce such a condition would be to deprive the defendant of the equal protection of the law was met by the Court as follows:

"The fourteenth amendment, in so far as it prohibits any abridgement of the privileges or immunities of citizens of the United States and guarantees the equal protection of the laws to all persons, addresses itself to the state government and its instrumentalities, to its legislative, executive, and judicial authorities, and not to contracts between individuals. It is state action of a particular character that is prohibited. Individual invasion of individual rights is not the [fol. 14] subject matter of the amendment. (Civil Rights Cases, 109 U. S. 18, 27 L. Ed. 835, 3 Sup. Ct. Rep. 18, see, also, Rose's U. S. Notes.) The fourteenth amendment, it is true, applies to the judicial as well as the legislative department of the state government. But the judiciary does not violate this provision of the federal constitution merely because it sanctions discriminations that are the outgrowth of contracts made by individuals. A different question would be presented if the court, while sanctioning such a provision against persons of African descent as we find in the deed in question here, were subsequently to hold to be invalid a similar provision directed against Hindus, Cingalese, and Maoris, or any other class of persons except negroes. The equal protection clause of the fourteenth amendment makes but one demand upon the state, and gives to the state but one right. It is that the state shall make, execute, and interpret its laws without discrimination. It must not grant rights to one which, under similar circumstances, it denies to another."

It was held in Los Angeles Investment Co. vs. Gary, 181 Calif. 680, that a condition in a deed providing for forfeiture in the event that the property involved should be occupied by a colored person was good and that no constitutional right of the defendant was violated by enforcing it. The Court approves of the decision in Title Guarantee and Trust Co. vs. Garrott, supra.

Restrictions based on difference of race were held not to infringe rights under the Fourteenth Amendment in Parmlee vs. Morris, 218 Mich. 625, and Queensborough Land Co. vs. Cazeau, 136 La. 724. In Koehler vs. Rowland, 275 Mo. 573, and Keltner vs. Harris, 196 S. W. (Mo.) 1, similar restrictions were upheld but there was no discussion of the Amendment.

Ganolfo vs. Hartman, 49 Fed. Rep. (Cir. Ct. Calif.) 181, is in favor of the defendant's contention the Court saying that the equal protection clause of the Fourteenth Amendment forbid- discrimination by the legislature and that a court could not do what the legislature was forbidden to do by sustaining the validity of such a restriction. The decision in that case however is opposed to the decision of the highest court of California in Los Angeles Investment Co. vs. Gary, supra.

For a general discussion of the question see State vs. Gurry, 121

Md. 534, Peoples Pleasure Park Co., Inc., vs. Rohleder, 109 Va. 439, Hopkins vs. Richmond, 117 Va. 639.

The point decided in Buchanan vs. Worley, 245 U. S. 59, a case much relied upon by the defendant, was that a city ordinance which undertook to restrict the right of a white person to convey property to a colored person was in violation of the Fourteenth Amendment.

The weight of authority is in favor of upholding the restrictive agreement.

Except as the question of public policy is raised by urging objections to the restrictive covenant here involved based on constitutional objections to its validity that question is not raised by the motion to dismiss but the defendant urges very strongly in her brief that such a restriction is against public policy and the point is perhaps one that should be considered. The defendant's brief points out [fol. 15] many bad results that may follow from upholding a restriction based on difference in race. They need not be stated here in detail. It seems that they are all met by what is said in Plessy vs. Ferguson, supra. A lengthy quotation from that case is desirable in order to indicate clearly the attitude of the Supreme Court of the United States with reference to enforced separation of races. The Court says at page 544:

"The object of the amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based on color, or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation in places where they are liable to — brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power even by courts of States where the political rights of the colored race have been longest and most earnestly enforced."

and after referring to a school law of Massachusetts at page 545:

"Similar laws have been enacted by Congress under its general power of legislation over the District of Columbia, Rev. Stat. D. C. ss. 281, 282, 283, 310, 319, as well as by the legislatures of many of the States, and have been generally if not uniformly, sustained by the courts."

and at page 550:

"So far, then, as conflict with the Fourteenth Amendment is concerned, the case reduces itself to the question whether the statute of Louisana is a reasonable regulation, and with respect to this there must necessarily be a large discretion on the part of the legislature.

In determining the question of reasonableness it is at liberty to act with reference to the established usages, customs and traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order. Gauged by this standard, we cannot say that a law which authorizes or even requires the separation of the two races in public conveyances is unreasonable, or more obnoxious to the Fourteenth Amendment that the acts of Congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislatures.

"We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it. The argu- [fol. 16] ment necessarily assumes that if, as has been more than once the case, and is not unlikely to be so again, the colored race should become the dominant power in the state legislature, and should enact a law in precisely similar terms, it would thereby relegate the white race to an inferior position. We imagine that the white race, at least, would not acquiesce in that assumption. The argument also assumed that social prejudices may be overcome by legislation, and that equal rights cannot be secured to the negro except by an enforced commingling of the two races. We cannot accept this proposition. If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits and a voluntary consent of individuals. As was said by the Court of Appeals of New York in People vs. Gallagher, 93 N. Y. 438, 448, 'This end can neither be accomplished nor promoted by laws which conflict with the general sentiment of the community upon whom they are designed to operate. When the government, therefore, has secured to each of its citizens equal rights before the law and equal opportunities for improvement and progress, it has accomplished the end for which it was organized and performed all of the functions respecting soci ' advantages with which it is endowed.' Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the constitution of the United States cannot put them upon the same plane."

In Wall vs. Oyster, 36 App. D. C. 50, the statute providing for separate schools for white and colored children in the District of Columbia was upheld.

As pointed out by the plaintiff's counsel the municipal authorities of the District have provided for separate bathing beaches, tennis courts, golf course and play grounds.

In view of the declared policy of the Congress which has plenary legislative authority over the District; of the judicial expressions of

the Supreme Court of the United States; of the decisions of the Court of Appeals of the District and of the action of the municipal authorities which has not been questioned by this suit so far as the Court is aware it was not against policy for the plaintiff and the other property owners to make the agreement in question so far as questions of race are concerned.

The defendant has referred to certain legislation of Congress and claims the protection of it. This legislation was enacted for the purpose of supplementing and making more effective the provisions of the Thirteenth and Fourteenth Amendments. The provisions of these statutes cannot of course afford more protection than the Amendments themselves therefore if the decision to be made in this case namely that the defendant's constitutional rights are not violated is sound it is unnecessary to discuss the effect of those statutes. [fol. 17] The decision of this Court in Pierce vs. Reed, Law No. 61968, is not a precedent controlling in this case.

The motion to dismiss the bill is denied with leave to answer in ten days.

Settle decree on notice.

Walter I. McCoy, Chief Justice.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

ORDER OVERRULING MOTION OF DEFENDANT HELEN CURTIS TO DISMISS BILL—Filed April 16, 1923

* * * * * * *

This cause came on to be heard upon the motion of the defendant Curtis to dismiss the bill of complaint herein, and the same having been argued by counsel and submitted to the court, it is by the Court this 16th day of April, A. D., 1923,

Adjudged, ordered, and decreed: That the said motion be and same hereby is overruled and the said defendant Curtis is hereby given leave to answer said bill within ten days from this date.

Walter I. McCoy, Chief Justice.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

MOTION OF DEFENDANT NO. 1 TO DISMISS BILL—Filed April 25, 1923

* * * * * * *

Comes now the defendant Irene Hand Corrigan by her attorney and moves the court to dismiss the bill of complaint filed herein and for grounds of said motion says:

1. That the alleged indenture or covenant made the basis for said bill of complaint is void in that the same is contrary to and in violation of the Constitution of the United States.

2. That the said alleged indenture or covenant is void in that the same is contrary to public policy.

James P. Schick, Attorney for Defendant Irene Hand Corrigan.

Messrs. James S. Easby-Smith and David A. Pine, Attorneys for Plaintiff:

Please take notice that the foregoing will be for hearing on Friday, April 27, 1923, at 10 o'clock A. M., or as soon thereafter as counsel may be heard.

James P. Schick, Attorney for Defendant Irene Hand Corrigan.

[fol. 18] Received copy of the foregoing motion and notice this 25 day of April, 1923.

James S. Easby-Smith, David A. Pine, Attorneys for Plaintiff.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

ORDER OVERRULING MOTION OF DEFENDANT IRENE HAND CORRIGAN TO DISMISS BILL—Filed April 27, 1923

* * * * * * *

This cause came on to be heard upon the motion of the defendant Corrigan to dismiss the bill of complaint herein and the same having been argued by counsel and submitted to the court, it is by the court this 27th day of April, A. D., 1923.

Adjudged, ordered and decreed: That the said motion be and the same hereby is overruled, and the said defendant Corrigan is hereby given leave to answer said bill of complaint within ten days of this date.

Walter I. McCoy, Chief Justice.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

ELECTION OF DEFENDANT CORRIGAN TO STAND ON MOTION TO DISMISS—Filed May 4, 1923

* * * * * * *

Comes now the defendant Irene Hand Corrigan by her attorney and elects to stand on her motion to dismiss the bill of complaint filed herein.

James P. Schick, Attorney for Defendant Irene Hand Corrigan.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

ELECTION OF DEFENDANT CURTIS TO STAND ON MOTION TO DISMISS—Filed May 4, 1923

* * * * * * *

Comes now the defendant, Helen Curtis, by her attorney and objecting to the action of the Court in overruling her Motion to Dismiss and saving an exception to said action, elects to stand on her said Motion to Dismiss the Bill of Complaint filed herein.

James A. Cobb, Attorney for Defendant Helen Curtis.

[fol. 19] SUPREME COURT OF THE DISTRICT OF COLUMBIA

DECREE—Filed May 8, 1923

* * * * * * *

This cause came on to be heard at this term upon the bill of complaint and the respective motions to dismiss the same filed herein by the respective defendants; and thereupon the said motions having been severally overruled and the said defendants having severally elected to stand on said motions, it is by the Court this 8th day of May, 1923,

Adjudged, ordered and decreed: That defendant Irene Hand Corrigan be and she hereby is permanently enjoined for and during the period of twenty-one years from and after the 1st day of June, 1921, from complying with or carrying out in any manner whatsoever all or any of the terms and provisions of that certain written contract of sale bearing date the 25th day of September, 1922, and entered into between said defendant Irene Hand Corrigan and the defendant Helen Curtis, otherwise known as Mrs. A. L. Curtis, by the terms of which said contract said defendant Curtis, under the name of Mrs. A. L. Curtis, did therein and thereby agree to purchase from said defendant Corrigan, and said defendant Corrigan did therein and thereby agree to sell to said defendant Curtis that certain piece and parcel of land lying and being in the City of Washington, District of Columbia known and described as Lot 20, Square 152, as recorded in the Surveyor's office of said District, and improved by a dwelling house and premises known as 1727 S Street, Northwest, of said City and District; and further that said defendant Irene Hand Corrigan be and she hereby is permanently enjoined during said period of time from directly or indirectly selling, or conveying or causing to be sold or conveyed to said defendant Helen Curtis, otherwise known as Mrs. A. L. Curtis, the said land and premises, and from making, signing, sealing or delivering to the said defendant Curtis a deed or any other form of conveyance of said land and premises.

It is further adjudged, ordered and decreed: That said defendant Helen Curtis, otherwise known as Mrs. A. L. Curtis, and her heirs and assigns be permanently enjoined during the period of twenty-one years from and after the 1st day of June, 1921, from taking title directly or indirectly from the defendant Corrigan to the hereinabove described land and premises and from using or occupying the same and from selling, conveying, leasing, renting or giving the same to, or permitting the same to be used or occupied by, any negro or negroes or persons of the negro race or blood.

Walter I. McCoy, Chief Justice.

From the foregoing decree the defendants in open court note an appeal to the Court of Appeals of the District of Columbia, and the [fol. 20] court thereupon fixed the cost bond on appeal in the sum of $100.00 or in lieu thereof a deposit of $50.00 in cash; this 8th day of May, 1923.

Walter I. McCoy, Chief Justice.

MEMORANDUM

May 23, 1923.—Undertaking on appeal filed.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

ASSIGNMENTS OF ERROR—Filed June 18, 1923

* * * * * * *

The Court erred as follows:

1. In overruling and dismissing Defendants' Nos. 1 and 2 (Appellants') Motions to Dismiss Bill.

2. In granting a permanent injunction against Defendants' Nos. 1 and 2 (Appellants').

3. In holding the indenture or covenant set out in the Bill as not being void as against public policy.

4. In not holding to the contrary.

5. In refusing to hold the said indenture or covenant void in that it deprived the defendants, appellants, and others, of property without due process of law; abridged the privileges and immunities of citizens of the United States, including the defendants, appellants, Irene Hand Corrigan and Helen Curtis, and other persons within this jurisdiction; and denied to the said defendants, the said Irene Hand Corrigan and Helen Curtis, and other persons within this jurisdiction, the equal protection of the law; and therefore is forbidden by the Constitution of the United States and especially by the Fifth, Thirteenth and Fourteenth Amendments thereof, and the

Laws enacted in aid and under the sanction of said Fifth, Thirteenth, and Fourteenth Amendments.

6. In not holding to the contrary.

James P. Schick, James A. Cobb, Attorneys for Defendants-Appellants.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

DESIGNATION OF RECORD—Filed June 18, 1923

* * * * * * *

The defendants, appellants, designate the following to constitute the record on their appeal in the above entitled cause:

1. Bill of Complaint with exhibits attached thereto.

2. Motion of Defendant No. 2 to dismiss Bill.

3. Opinion of Court.

[fol. 21] 4. Order overruling Motion to Dismiss Bill and Leave to Answer within ten (10) days.

5. Motion of Defendant No. 1 to dismiss Bill, Notice and Acknowledgment.

6. Order overruling Motion of Defendant No. 1 to Dismiss Bill.

7. Election of Defendant No. 1 to stand on Motion to Dismiss.

8. Election of Defendant No. 2 to stand on Motion to Dismiss.

9. Decree granting permanent injunction. Appeal noted.

10. Memorandum of filing and approving of bond on appeal.

11. Assignments of Error.

12. This Designation.

James P. Schick, James A. Cobb, Attorneys for Defendants-Appellants.

Service of a copy of the above Designation of Record is hereby acknowledged this 16 day of June, A. D., 1923.

David A. Pine, Attorney for Plaintiff-Appellee.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 31, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 40702 in Equity, wherein John J. Buckley is Plaintiff and Irene Hand Corrigan et al. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 24th day of September, 1923.

Morgan H. Beach, Clerk, by R. S. Wayland, Asst. Clerk.
E. W. (Seal of Supreme Court of the District of Columbia.)

[File endorsement omitted.]

[fol. 22] IN COURT OF APPEALS, D. C.

No. 4059

IRENE HAND CORRIGAN and HELEN CURTIS, Otherwise Known as Mrs. A. L. CURTIS, Appellants,

vs.

JOHN J. BUCKLEY

ARGUMENT—April 21st, 1924

The argument in the above entitled cause was commenced by Mr. James A. Cobb, attorney for the appellants, and was concluded by Mr. James S. Easby-Smith, attorney for the appellee.

[fol. 23] IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

Before Robb and Van Orsdel, Associate Justices; Barber, Judge United States Court of Customs Appeals

OPINION

Mr. Justice Van Orsdel delivered the Opinion of the Court:

VAN ORSDEL, Associate Justice:

Appellee, plaintiff below, filed a bill of complaint to restrain defendant, Corrigan, from conveying to defendant, Curtis, certain real estate in the District of Columbia, and to prevent the latter from occupying the same, in violation of a covenant affecting the title to said land, and to compel specific performance of the covenant.

It is alleged in the bill that plaintiff owns an undivided interest in Lot 74, Square 152, improved by a dwelling house. Defendant Corrigan is the owner of Lot 20, Square 152, on which is situated a [fol. 24] dwelling house; that on June 1, 1921 plaintiff and defendant Corrigan, together with 28 other persons, who were owners of land improved by dwelling houses adjacent to and in the same immediate neighborhood, as the above property described, mutually executed and delivered a covenant which was recorded in the Office of the Recorder of Deeds of the District of Columbia, which, after describing the location of the property as a whole, and expressing the desire of the parties to further the interests of said community and neighborhood, provided, that "in consideration of the premises and the sum of Five Dollars ($5.00) each to the other in hand paid, the parties hereto do hereby mutually covenant, promise and agree each to the other and for their respective heirs and assigns, that no part of the land now owned by the parties hereto, a more detailed description of said property being given after the respective signatures hereto, shall ever be used or occupied by, or sold, conveyed, leased, rented, or given, to Negroes, or any person or persons of the Negro race or blood. This covenant shall run with the land and bind the respective heirs and assigns of the parties hereto for the period of twenty-one (21) years from and after the date of these presents."

Plaintiff alleged that thereafter defendant Corrigan entered into a [fol. 25] contract with defendant Curtis to sell to the latter a house and lot belonging to the former and included within the covenant; that defendant Curtis is a person of the Negro race and blood, and before making the contract had knowledge of the existence and terms of the covenant, and that in executing the contract of sale plaintiff had acted in violation of the terms and conditions of the covenant. Plaintiff alleges that if the conveyance is made in accordance with the contract of sale, irreparable injury will be done to plaintiff and to other persons who are parties to the indenture or covenant; that plaintiff is without any plain adequate and complete remedy at law,

and that plaintiff is entitled to specific performance of the covenant by means of injunction preventing the defendant from carrying into effect the contract of sale.

Plaintiff accordingly prayed that defendant Corrigan be enjoined for twenty-one years from the date of the covenant, from carrying out the contract of sale with defendant Curtis; and that Curtis be permanently enjoined, during the same period of time, from taking title to the land and from occupying, selling, conveying, leasing, renting, or giving the same to a negro, or permitting the same to be used or occupied by any negro.

Defendant Curtis filed a motion to dismiss the bill on the ground [fol. 26] that the covenant is void, in that it deprives defendant and others of property without due process of law, abridges the privileges and immunities of citizens of the United States, and denies the defendants equal protection of the law. The court below denied the motion to dismiss the petition, and defendants electing to stand upon their motion, a decree of injunction was entered from which this appeal was taken.

Appellant seems to have misconceived the real question here involved. We are not dealing with the validity of a statute, or municipal law, or ordnance; nor are we concerned with the right of a negro to acquire, own, and use property; nor are we confronted with any pre-existing rights which are affected by the covenant here in question. The sole issue is the power of a number of land owners to execute and record a covenant running with the land by which they bind themselves, their heirs and assigns, during a period of twenty-one years, to prevent any of the land described in the covenant from being sold, leased to, or occupied by, negroes.

The constitutional right of a negro to acquire, own, and occupy property does not carry with it the constitutional power to compel sale and conveyance to him of any particular private property. The individual citizen, whether he be black or white, may refuse to sell or lease his property to any particular individual or class of indi- [fol. 27] viduals. The state alone possesses the power to compel a sale or taking of private *private* property, and that only for public use. The power of these property owners to exclude one class of citizens, implies the power of the other class to exercise the same prerogative over property which they may own. What is denied one class may be denied the other. There is, therefore, no discrimination within the Civil Rights clauses of the Constitution. Such a covenant is enforcible not only against a member of the excluded race, but between the parties to the agreement.

Our attention has not been called to any decision of the Supreme Court of the United States involving the exact question before us. It has, however, been before the courts of the States where it has been held that similar covenants against ownership or occupancy by negroes are neither unconstitutional nor contrary to public policy. Parmalee et al. v. Morris, 218 Mich. 625; Queensboro Land Co. v. Cazeaux, 136 La. 724; Los Angeles Investment Co. v. Gary, 181 Calif. 680; Koehler v. Rowland, 275 Mo. 573.

It is unnecessary to consider the contention that the restriction amounts to a denial of equal protection of the laws under the 14th Amendment, since the Supreme Court has held in numerous instances, that the inhibition is upon the power of the State and not to [fol. 28] action by individuals in respect of their property. United States v. Cruikshank, 92 U. S. 542; Virginia v. Rives, 100 U. S. 313; United States v. Harris, 106 U. S. 629; Civil Rights Cases, 109 U. S. 31.

In Plessy v. Ferguson, 163 U. S. 537, the court, sustaining the validity of a statute of Louisiana, providing for separation of races in passenger cars, as not being repugnant to the provisions of the 14th Amendment, said:

"The object of the amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish the distinctions based on color, or to enforce social, as distinguished from political equality, or a co-mingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the State legislatures in the exercise of their police power."

The foregoing rule applies not only to segregation in railway coaches but to statutes requiring separate white and colored schools, [fol. 29] as well as regulations providing for the segregation of the races in municipal play grounds, municipal golf courses, municipal tennis courts, and municipal bathing beaches. The same general and settled public opinion controls in respect of the segregation of the races in churches, hotels, restaurants, lodging houses, apartment houses, theaters, and places of public amusement.

It follows that the segregation of the races, whether by statute or private agreement, where the method adopted does not amount to the denial of fundamental constitutional rights, cannot be held to be against public policy. Nor can the social equality of the races be attained either by legislation or by the forcible assertion of assumed rights. As was said in People v. Gallagher, 93 N. Y. 438, 448:

"This can neither be accomplished nor promoted by laws which conflict with the general sentiment of the community upon whom they are designed to operate. When the Government, therefore, has secured to each of its citizens equal rights before the law and equal opportunities for improvement and progress, it has accomplished the end for which it was organized, and performed all the functions respecting social advantages with which it is endowed."

Defendant claims protection under certain legislation of Congress. As suggested in the opinion of the learned trial justice, this legisla- [fol. 30] lation was enacted to carry into effect the provisions of the Constitution. The statutes, therefore, can afford no more protection than the Constitution itself. If, therefore, there is no in-

fringement of defendant's rights under the Constitution, there can be none under the statutes.

The decree is affirmed with costs.

Josiah A. Van Orsdel, Associate Justice.

[fol. 31] In Court of Appeals, D. C.

Decree—June 2nd, 1924

[Title omitted]

Appeal from the Supreme Court of the District of Columbia

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs.

Per Mr. Justice Van Orsdel, June 2, 1924.

Judge Orion M. Barber of the U. S. Court of Customs Appeals sat in this case with Mr. Justice Robb and Mr. Justice Van Orsdel.

[fol. 32] In the Court of Appeals of the District of Columbia

[Title omitted]

Petition for Appeal—Filed June 5, 1924

Come now the appellants in the above entitled cause and respectfully show that on or about the 2nd day of June, 1924, this Court entered a decree herein in favor of the appellee and against the appellants, affirming the decree of the Supreme Court of the District of Columbia in favor of appellee, in which decree of the Court of Appeals certain errors were committed to the prejudice of the appellants, all of which will appear more in detail from the assignments of error filed with this petition.

The appellants further show that the decree of the Court of Appeals in this case is subject to review by the Supreme Court of the United States under the provisions of paragraph 3 of section 250 of the Judicial Code in that the construction or application of the Constitution of the United States is involved.

The appellants further show that the decree of the Court of Appeals is reviewable by the Supreme Court of the United States under the provisions of paragraph 6 of said section 250 of the Judicial Code, in that the construction of certain acts of Congress, to wit, Sections 1977, 1978, and 1979, Revised Statutes of the United

States were drawn in question by the appellants who were the defendants below, and who asserted and relied upon a construction of said statutes contrary to that placed thereon by the Court of Appeals [fol. 33] in its decree herein.

Wherefore appellants pray that an appeal be allowed in this behalf to the Supreme Court of the United States for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States, and that the mandate of this court be stayed until further order. That the bond, to act as supersedeas, be fixed at $300.

Irene Hand Corrigan and Helen Curtis, otherwise known as Mrs. A. L. Curtis, by their attorneys, Henry E. Davis, James A. Cobb, James P. Schick, Attorneys.

[fol. 34] In the Court of Appeals of the District of Columbia

[Title omitted]

Assignments of Error—Filed June 5, 1924

And now come the appellants by their attorneys and say that in the record and proceedings of the Court of Appeals in the above-entitled cause and in the rendition of final decree therein, manifest error has intervened, to the prejudice of said appellants, in this:

1. The court erred in affirming the decree of the court below.

2. The court erred in not reversing the decree of the court below.

3. The court erred in holding that the indenture or covenant set out in appellee's bill of complaint is not void as against public policy.

4. The court erred in not holding to the contrary.

5. The court erred in not holding that the said indenture or covenant is void in that it deprives the defendants, appellants, and others, of property without due process of law.

6. The court erred in holding to the contrary.

7. The court erred in not holding that the said indenture or covenant is void in that it abridged the privileges and immunities of citizens of the United States, including the defendants, appellants, Irene Hand Corrigan and Helen Curtis, and other persons within this jurisdiction.

[fol. 35] 8. The court erred in holding to the contrary.

9. The court erred in not holding that the said indenture or covenant is void in that it denied to the said defendants, the said Irene Hand Corrigan and Helen Curtis, and other persons within this jurisdiction, the equal protection of the law.

10. The court erred in holding to the contrary.

11. The court erred in not holding that the said indenture or covenant is void in that it is forbidden by the Constitution of the United States and especially by the Fifth, Thirteenth and Fourteenth Amendments thereof, and the Laws enacted in aid and under the sanction of the said Fifth, Thirteenth, and Fourteenth Amendments.

12. The court erred in holding to the contrary.

Irene Hand Corrigan and Helen Curtis, otherwise known as Mrs. A. L. Curtis, Appellants, by Henry E. Davis, James A. Cobb, James P. Schick, Their Attorneys.

Service acknowledged this 5th day of June A. D., 1924. David A. Pine, Attorney for Appellee.

[fol. 36] [File endorsement omitted.]

[fol. 37] In Court of Appeals of District of Columbia

[Title omitted]

Order Allowing Appeal—June 7th, 1924

On consideration of the petition for the allowance of an appeal to the Supreme Court of the United States in the above entitled cause, it is ordered by the Court that said appeal be, and the same is hereby, allowed, and the bond to act as supersedeas is fixed at the sum of three hundred dollars.

[fol. 38] Bond on Appeal for $300—Approved and filed June 13, 1924; omitted in printing

[fol. 39] [File endorsement omitted.]

[fol. 40] Citation—In usual form, showing service on James S. Easby-Smith; filed June 13, 1924; omitted in printing

[fol. 41] [File endorsement omitted.]